

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

CAROLYN MITCHELL,)
)
Plaintiff,)
)
vs.)
)
ANCHORAGE POLICE DEPARTMENT and)
the MUNICIPALITY OF ANCHORAGE, a)
municipal corporation, WALTER)
MONEGAN, OFFICER HENIKMAN, and)
OFFICER J. VOSS,)
)
Defendants.)

Case No. A05-273 CV (JWS)

VIDEOTAPE DEPOSITION OF OFFICER JUSTIN C. VOSS

APPEARANCES:

FOR THE PLAINTIFF: MR. MOSHE CALBERG ZOREA
MR. ISAAC D. ZOREA
Attorney at Law
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FOR THE DEFENDANTS: MS. JOYCE WEAVER JOHNSON
Assistant Municipal Attorney
632 West 6th Avenue, Suite 730
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ALSO PRESENT: MS. CAROLYN MITCHELL

* * * * *

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Exhibit

D

1 A The first time that I ever recall contact- --
2 contacting Ms. Mitchell was reference a reported bank
3 robbery at the Sears Mall.

4 Q Okay. And what behavior on her part did you observe?

5 A I recall that dispatch gave a locate for -- or gave a
6 description of a pos- -- of the suspect. I recall that
7 I was with Officer Henikman, that we set up on one of
8 the entrances which is on -- pardon me -- the west side
9 of Sears but the eastern end of the mall, and on the
10 south side of the building. And that we were there and
11 that Ms. Mitchell came out and I saw that she matched
12 the description of the suspect. We detained her, and a
13 show up was performed.

14 Q What part of the description did she match?

15 A I remember they said she was a heavy set black female
16 wearing blue with sunglasses and bags under her arms.

17 Q Is that your recollection of what she was wearing?

18 A That is the recollection of the description that was
19 given and what she matched. What about her description
20 matched that.

21 Q So your recollection is she was wearing blue?

22 A Um-hum. (Affirmative)

23 Q What part of her was wearing blue?

24 A She had -- I think it was a University of North
25 Carolina like jump suit, sweat suit on with a -- she

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1 MS. JOHNSON: I'm going to object to
2 argumentative questions and mischaracterizing prior testimony.

3 Q That's fine. She can object. Go ahead.

4 A You're asking specifically about her actions, but what
5 I defined earlier.....

6 Q You -- you defined -- right. You defined earlier what
7 would give rise to a tarry stop and then you said what
8 she did. And I'm asking you if what she did matched
9 the requirements of making a tarry stop. Yes? No?

10 A Well, that's not a yes or no question.

11 Q Oh, it isn't?

12 A No, I don't think so.

13 Q Okay. How is it not?

14 A How is it not is earlier I described that an individual
15 fitting within a context, either something did not
16 match with that context or something did match with
17 that context, was specifically stated about the context
18 of a given situation. And her actions are one of many
19 different things that could be a suspect or
20 individual's actions, or one of a multitude of things
21 that could have contexted reasonable suspicion. Just
22 their appearance and walking out of a certain location,
23 given that there was a bank robbery reported only
24 minutes before that and their appearance and their
25 distance from that location both matched with what the

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1 reported crime had been. That's easily reasonable
2 suspicion. Even though all of her specific actions
3 were -- the clothing that she had picked to wear that
4 day and that she had been walking out of a specific
5 exit, that's not the only thing that lends to
6 reasonable suspicion. It was her appearance matched
7 the description that was given. There was a certain
8 time lapse and she was a certain distance from the
9 reported location.

10 Q Were you able to observe that she was directed out the
11 door that you observed her come out of by officers of
12 the Anchorage Police Department?

13 A I don't know if that happened or not, no.

14 Q You don't know? You couldn't see that they were saying
15 go out this door?

16 A I don't recall if that was happening or not.

17 Q Okay. If it was, would that raise a clue in your mind
18 that maybe she had passed the threshold test as are as
19 your colleagues were concerned?

20 MS. JOHNSON: Objection, foundation.

21 Speculation.

22 Q You don't know? You paid no attention to whether
23 someone had directed her to go outside?

24 A I -- I can't see inside the -- from where we were I
25 couldn't see inside the mall.

1 Q Okay.

2 A So how would I.....

3 Q So where were you -- where were you in relation to the
4 door that you said you observed her come out of?

5 A We were positioned south side of the mall, Sears comes
6 out like that and there's like garage doors here. We
7 were close to the southwest corner of the garage door
8 part of Sears.

9 Q Okay. But were you able to see her come out the door?

10 A That's correct.

11 Q Okay. But you say you couldn't not see beyond her
12 through the glass doors?

13 A Into the mall, no. I don't recall being able to see
14 into the mall.

15 Q Okay. Then what happened after you saw her? What
16 actions did you take?

17 A I recall that we both saw her, that we both thought
18 that she matched the description.

19 Q You were speculating, of course, right?

20 MS. JOHNSON: Objection, argumentative.

21 Q Were you speculating or do you have a direct link to
22 Officer Henikman's mind?

23 MS. JOHNSON: Objection, foundation,
24 argumentative.

25 Q You -- you -- what's the basis for you saying we when

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1 it's you, could you tell me?

2 A I can. I'm just waiting for you to stop. I'm sorry.

3 Q Yeah. Go ahead.

4 A I keep -- I just keep getting interrupted.

5 Q Okay.

6 A Okay. I recall that we were both out of our vehicles
7 and I -- I recall looking at him and saying I think
8 that might be her, she matches the description or
9 something to that effect. I remember him agreeing.

10 Q Okay. So you had direct communication with Officer
11 Henikman?

12 A Correct.

13 Q How far from Officer Henikman were you in distance?

14 A I don't recall specifically.

15 Q But close enough to be able to hear that kind of
16 exchange?

17 A Correct.

18 Q Okay. Okay. So after that verbal interaction between
19 yourself and Officer Henikman, what happened then?
20 What did you do?

21 A I recall that I held Ms. Mitchell at guard and that --
22 I recall that we made verbal contact. I don't recall
23 if I specifically gave her verbal instructions, or he
24 did, or we both did. But I recall that verbal contact
25 was made. That she was given instructions and that we

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1 took her into custody.

2 Q Okay. And you pointed your gun at her?

3 A That's incorrect.

4 Q Oh, you did not point your gun at her?

5 A Correct.

6 Q If she was standing, seeing you, would she perceive
7 that a firearm was pointed at her?

8 MS. JOHNSON: Is that a question?

9 MR. ZOREA: Yeah.

10 A Well, just like you -- I don't have a mental connection
11 with Ms. Mitchell just like I don't have with
12 Officer.....

13 Q What -- if you -- first, what firearm did you have?
14 What was the firearm?

15 A I had a shot gun.

16 Q Okay. You had a shot gun. And how were you holding
17 the shot gun?

18 A At a typical guard position which would be -- or what's
19 -- I've also heard it call a low ready, which is
20 pointed at the ground.

21 Q Did you point it at her hands?

22 A No. I -- no.

23 Q Did you observe Officer Henikman pointing at her hands?

24 A Point my shot gun at her?

25 Q Her hands being pointed at by his shot gun? You were

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1 right next to him, nearby.

2 A I don't recall if he had a shot gun or not. I
3 don't.....

4 Q You don't recall if he had a shot gun?

5 A No.

6 Q What did he have if he didn't have a shot gun?

7 A I don't know. I don't recall if he had -- there's
8 several types of firearms that.....

9 Q Okay.

10 Awe had.

11 Q You don't -- you don't recall what kind of firearm he
12 had but you do recall what he said about Ms. Mitchell,
13 is that right?

14 A Correct.

15 Q Okay. And you testified just a minute ago that she was
16 taken into custody.

17 A Correct.

18 Q Okay. Why was she taken into custody?

19 A She was a certain distance away from the place where a
20 crime had been reported, within an amount of time that
21 was reasonable to believe that that distance had been
22 traversed since the crime had been committed and she
23 matched the description of the suspect that was given.
24 Q Okay. So your training that you had in the academy and
25 with the field officers afterwards for 54 shifts.....

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1 Took her into custody. What does taking her into
2 custody mean?

3 A Putting her in hand cuffs.

4 Q I see. So you approached her -- are you the one that
5 put her in cuffs?

6 A I don't -- I don't recall specifically, but I don't
7 think that I was.

8 Q Okay. Why? Because you wouldn't have done so?

9 A No. Because Officer Henikman is the one who after that
10 continued the contact with her and so that to me, for
11 the most part, says that Officer Henikman probably put
12 her into hand cuffs. Probably pat searched her.
13 Probably, you know, continued the contact with her.
14 That's usually the sequence of events.

15 Q Okay. You say probably. Would there be a situation
16 where a person would be put into hand cuffs without
17 being pat searched?

18 A I would say that that's highly unlikely, but it could
19 happen.

20 Q Okay. And the purpose of the pat search is what?

21 A To check for weapons or forms of escape.

22 Q Okay. So if he pat searched her, checked for weapons
23 and doesn't find any, why would he need to hand cuff
24 her?

25 A Hand cuffing would probably be the first thing that was

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1 she was out of -- was leaving my custody or was being
2 released.

3 Q Where was your patrol car in relation to where you and
4 Officer Henikman were?

5 A In the same area.

6 Q What does that mean in terms of distance?

7 A I would say that we were within about 50 feet of there.
8 But I don't really recall exactly.

9 Q What's the problem with you taking her and putting her
10 in the patrol car?

11 A I don't think that there is a problem with that
12 necessarily except that we were going to perform a show
13 up and show ups are -- we try to perform them, to the
14 best of our ability, so that the person is away from
15 police vehicles that they -- it's so that they look
16 like they are not under arrest or don't look like
17 they're the suspect. Because a lot of time all the red
18 and blue flashing lights, all the police vehicles, lots
19 of officers around, have a tendency to make witnesses
20 feel that this person has -- is the person. Not just
21 because they kind of look like that, but also because
22 there's so many cops, that must be the person. So it's
23 part of our training to do our best to make it look
24 like they aren't under arrest or aren't being charged
25 with the crime, or we don't think that it's necessarily

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1 the person. You know, the basic instructions are we
2 tell the person, you know, this person for whatever
3 reason we think might be the person but it's also
4 possible that they're not so, you know, you need to
5 take your best look at this person and see if you
6 remember that that's the individual, not because we
7 think that it might be.

8 Q And having one person that happened to be black, by
9 herself, standing with hand cuffs on wasn't going to be
10 impermissibly suggestive in your mind?

11 MS. JOHNSON: Objection, foundation, form.

12 A Well, it could be. But it's a lot less suggestive than
13 if.....

14 Q If she were sitting in the patrol car?

15 A If she had gotten out of a patrol car with red and blue
16 flashing lights and there's several cars standing there
17 and officers.....

18 Q Was red and blue flashing lights on all this time?

19 A I don't recall if they were or not.

20 Q Okay. Because -- do you recall that Ms. Mitchell was
21 standing right out there with hand cuffs, people going
22 by on Benson, able to see her in that position?

23 A I don't recall specifically exactly where she was
24 standing or -- I don't recall specifically that people
25 at Benson could see her but I would imagine that that

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1 not at issue.

2 MR. ZOREA: Okay. You -- you can object.

3 But.....

4 MS. JOHNSON: Keep to the facts, counsel.

5 Q What part of that chronology of events is wrong in your
6 mind?

7 A That you -- you're implying that I don't care how Ms.
8 Mitchell feels. I think that's what you're implying
9 and I think that that's incorrect. I think that it
10 would be more to my -- speaking more to my character to
11 say that I just told you that she was placed in a place
12 where it would be -- it lends more to her credit, or to
13 her benefit that people would be less likely to
14 identify her as being the suspect. I can imagine how
15 she would be much more so than she already is,
16 emotionally distraught, or if you're saying she's
17 emotionally distraught, it would be much more so if she
18 had gotten out of a police car with red and blue
19 flashing lights and several officers standing around
20 and that person -- that witness to the crime said oh,
21 that must be her. And imagine if she had been taken
22 into custody by federal -- by the Federal Bureau of
23 Investigation, taken down to their building while in
24 custody, spent hours upon hours, because that's how
25 long investigation when somebody is taken into custody

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1 and arrested takes, and then remanded to a federal
2 penitentiary where she awaited trial for six months to
3 four years or however long it takes.....

4 Q Well.....

5 Athat would be much more emotionally traumatic.

6 Q Yeah. But.....

7 A So it speaks to my credit -- can I finish, please?

8 Q Yeah.

9 A Thank you. It speaks to my credit that we did the best
10 thing that we could for her at that time.

11 Q Did it occur to you that she could sit in the vehicle
12 until the show up came and then she could get out
13 briefly without the flashing lights on and the person
14 would be able to say yea or nay about her?

15 A I don't know if that thought ever crossed my mind or
16 not. But again, I would like to reiterate that Officer
17 Henikman had her in custody, I did not.

18 Q Okay. Now you've testified about that before. At what
19 point did you part ways with Officer Henikman?

20 A We were together at the same place but he took custody
21 and continued the contact with her while I stayed with
22 my attention more focused on the doors where people
23 were still exiting, to watch for other possible
24 suspects. And that was kind of our -- our attention at
25 that point was I would say fairly divided. And I

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1 A I would.....

2 MS. JOHNSON: Same objection.

3 A I'd say that's what I'm referring to as to why they
4 were detained. Why they were placed in the hand cuffs.

5 Q So is it fair to say, because you've repeatedly linked
6 hand cuffing and detaining. Are the two synonymous
7 with you?

8 A No. But in this situation they are. I'm sorry, I keep
9 getting confused. We keep going from hypothetical back
10 to specific.

11 Q Well, no. In any case do you -- you seem to tie hand
12 cuffing and detaining. So are they -- they go
13 together?

14 A In this situation they do. She was -- she was detained
15 when she was held at guard and then she was immediately
16 placed in hand cuffs as soon as practical to do so. So
17 that's -- that's like -- the physical representation of
18 her being detained in this situation, was the fact that
19 she was placed in hand cuffs.

20 Q Would you have done that if she was not a black person?

21 A Absolutely.

22 Q To the best of your recollection how long was she held
23 in hand cuffs?

24 A I think the best venue for that information would
25 probably be the dispatch log. I -- I don't recall